

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.30.630 pertaining to temporary water)	PROPOSED AMENDMENT
quality standards)	
)	(WATER QUALITY)

TO: All Concerned Persons

1. On September 19, 2006, at 3:00 p.m., the Board of Environmental Review will hold a public hearing at the Lincoln Ranger Station at 1569 Highway 200, Lincoln, Montana, to consider the proposed amendment of the above-stated rule. The hearing will be preceded by a public meeting at 2:00 p.m. at the same location. At the public meeting the Department of Environmental Quality will make a presentation and answer questions regarding the proposed amendment.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., September 11, 2006, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.30.630 TEMPORARY WATER QUALITY STANDARDS (1) through (1)(e) remain the same.

~~(2) Following are the temporary water quality standards and related provisions for portions of Mike Horse Creek, Beartrap Creek and the upper Blackfoot River:~~

~~(a) The goal of the state of Montana is to have these waters support the uses designated for waters classified B-1 at ARM 17.30.623(1). The standards for the parameters listed in this rule temporarily modify the specific standards for those parameters provided in ARM 17.30.623 for each of the water bodies listed below, until the temporary standards expire or are terminated by the board. The standards for parameters not listed in this rule are the specific standards listed in ARM 17.30.623 except where those requirements conflict with the temporary standards listed below.~~

~~(b) The existing uses of these water bodies must be maintained during the period that these temporary standards are in effect.~~

~~(c)(i) Except as provided in (2)(c)(ii), these standards are effective until May 31, 2008.~~

~~(ii) On or before September 1, 2003, the department shall certify to the board the date upon which the United States granted authority to the petitioner, asarco,~~

inc., to conduct water restoration activities on the federal land that is subject to the implementation plan. If the date certified is later than May 31, 2001, the effective period established in (2)(c)(i) will be automatically extended by the number of days that elapsed between May 31, 2001, and the date certified. However, this extension may not exceed an additional two years beyond May 31, 2008.

(d)(i) Except as provided in (2)(d)(ii) below, the temporary water quality standards for Mike Horse Creek, from the clean water diversion structure (N47°1'19.3", W112°21'40.9") to its confluence with Beartrap Creek (N47°1'44.0", W112°21'13.0"), are as follows. For the reach described above, no increase from existing conditions for any of the parameters listed below (no decrease for pH) is allowed. The numeric temporary standards for the specific parameters listed below apply only at the monitoring site location BRSW-22 used to calculate those temporary standards. No more than 3% of the monitored samples may exceed the numeric metals standards or may be less than the pH standard below. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and the pH standard is in standard units (su).

Parameter	µg/liter
Cadmium	135.
Copper	3,000.
Iron	900.
Lead	230.
Manganese	6,000.
Zinc	22,000.
pH	must be maintained above 6.5 su.

(ii) The water quality standards for Mike Horse Creek, from the clean water diversion structure (N47°1'19.3", W112°21'40.9") to its confluence with Beartrap Creek (N47°1'44.0", W112°21'13.0"), during remediation-related construction activities are the quality that results from those activities, provided all necessary permits and authorizations are obtained and all reasonable steps are taken to minimize the duration, extent and magnitude of the short-term impacts.

(e)(i) Except as provided in (2)(e)(ii) below, the water quality standards for Beartrap Creek, from the foot of the Beartrap tailings impoundment dam (N47°1'42.1", W112°21'11.3") to its confluence with Anaconda Creek (N47°2'5.8", W112°21'31.1"), are as follows. For the reach described above, no increase from existing conditions for any of the parameters listed below (no decrease for pH) is allowed. The numeric temporary standards for the specific parameters listed below apply only at the monitoring site location BRSW-23 used to calculate those temporary standards. No more than 3% of the monitored samples may exceed the numeric metals standards or may be less than the pH standard below. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and the pH standard is in standard units (su).

Parameter	µg/liter
Cadmium	50.
Copper	700.

Iron	500.
Lead	80.
Manganese	3,700.
Zinc	7,500.
pH	must be maintained above 6.5 su.

(ii) The water quality standards for Beartrap Creek, from the foot of the Beartrap tailings impoundment dam (N47°1'42.1", W112°21'11.3") to its confluence with Anaconda Creek (N47°2'5.8", W112°21'31.1"), during remediation-related construction activities are the quality that results from those activities, provided all necessary permits and authorizations are obtained and all reasonable steps are taken to minimize the duration, extent and magnitude of the short-term impacts.

(f)(i) Except as provided in (2)(f)(ii) below, the water quality standards for the Blackfoot River, from Anaconda Creek (N47°2'5.8", W112°21'31.1") to the confluence of Stevens Gulch (N47°2'24.8", W112°22'15.8"), are as follows. For the reach described above, no increase from existing conditions for any of the parameters listed below (no decrease for pH) is allowed. The numeric temporary standards for the specific parameters listed below apply only at the monitoring site location BRSW-9 used to calculate those temporary standards. No more than 3% of the monitored samples may exceed the numeric metals standards or may be less than the pH standard below. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and the pH standard is in standard units (su).

Parameter	µg/liter
Cadmium	16.
Copper	220.
Lead	25.
Manganese	4,300.
Zinc	6,000.
pH	must be maintained above 6.5 su.

(ii) The water quality standards for the Blackfoot River, from Anaconda Creek (N47°2'5.8", W112°21'31.1") to its confluence with Stevens Gulch (N47°2'24.8", W112°22'15.8"), during remediation-related construction activities are the quality that results from those activities, provided all necessary permits and authorizations are obtained and all reasonable steps are taken to minimize the duration, extent and magnitude of the short-term impacts.

(g)(i) Except as provided in (2)(g)(ii) below, the water quality standards for the Blackfoot River, from the confluence of Stevens Gulch (N47°2'24.8", W112°22'15.8") to the confluence with Pass Creek (N47°2'30.5", W112°22'52.8"), are as follows. For the reach described above, no increase from existing conditions for any of the parameters listed below (no decrease for pH) is allowed. The numeric temporary standards for the specific parameters listed below apply only at the monitoring site location BRSW-12 used to calculate those temporary standards. No more than 3% of the monitored samples may exceed the numeric metals standards or may be less than the pH standards below. Metals standards are in terms of

micrograms per liter ($\mu\text{g}/\text{liter}$) total recoverable concentrations and the pH standard is in standard units (su).

Parameter	$\mu\text{g}/\text{liter}$
Cadmium	10.
Copper	70.
Iron	340.
Lead	23.
Manganese	900.
Zinc	2,700.
pH	must be maintained above 6.5 su.

(ii) ~~The water quality standards for the Blackfoot River, from the confluence of Stevens Gulch (N47°2'24.8", W112°22'15.8") to the confluence with Pass Creek (N47°2'30.5", W112°22'52.8"), during remediation-related construction activities are the quality that results from those activities, provided all necessary permits and authorizations are obtained and all reasonable steps are taken to minimize the duration, extent and magnitude of the short-term impacts.~~

AUTH: 75-5-201, 75-5-312, MCA
IMP: 75-5-312, MCA

REASON: The board is proposing to amend ARM 17.30.630 to repeal the temporary water quality standards for cadmium, copper, iron, lead, manganese, zinc, and pH that were adopted in 2000 for portions of Mike Horse Creek, Beartrap Creek, and the upper Blackfoot River and were to remain in effect for eight years. If the temporary water quality standards for these streams are repealed as proposed, the specific water quality standards in ARM 17.30.623 for streams classified B-1 will once again apply to these waters.

Temporary water quality standards may be adopted for specific parameters that are causing a water body not to support one or more of its designated uses. The temporary water quality standards may be statistically based on ambient conditions and, as in this case, can be several orders of magnitude greater than the standards that otherwise would apply. The purpose of the temporary water quality standards is to allow the petitioner to develop and implement a cleanup plan and a schedule of activities with the intent to have the water body support its designated uses within the timeframe of the temporary standards.

As a condition of temporary standards adoption, the person who requests them must submit a cleanup plan that is designed to improve the water quality so that the water body supports its designated uses. The board is proposing this amendment to repeal the temporary water quality standards for portions of Mike Horse Creek, Beartrap Creek, and the upper Blackfoot River because of inadequate progress in meeting the goals in the implementation plan and failure to meet milestones that served as a basis for adopting the temporary standards. Due to this lack of progress, the board is proposing to terminate the temporary standards as expressly authorized under 75-5-312(11), MCA. Alternatively, the board could modify the implementation plan and schedule if there was "convincing evidence" that

the plan needs modification. 75-5-312(12), MCA. Since there is no evidence that a modified plan would assure continued progress in implementing the plan, the board is proposing to terminate the temporary standards and return the streams to the former standards for B-1 streams.

The lack of progress that has prompted the board's proposal to terminate the temporary standards is not limited to one failure, but consists of many. For example, there has been a chronic failure to submit the annual data summary report and annual work plan on time. In addition, numerous reclamation activities have not been completed according to the implementation plan's schedule. The activities that have not been completed in a timely fashion include: (1) the mine waste reclamation plan and removal for the Lower Mike Horse Creek (scheduled for completion in 2003); (2) the dispersed floodplain tailings reclamation plan and removal for the Beartrap Creek drainage (scheduled for completion in 2004); (3) the mine waste and possible adit discharge reclamation plan and removal on the Flosse and Louise patented claim (scheduled for completion in 2004); (4) the concentrated tailings reclamation plan and removal for the Upper Blackfoot River drainage near the confluence with Shave Creek (scheduled for completion in 2005); (5) the dispersed floodplain tailings reclamation plan and removal for the Upper Blackfoot River drainage (scheduled for completion in 2005); and (6) Stevens Gulch reclamation plan (scheduled for completion in 2006).

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., October 2, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to the board secretary

at ber@mt.gov or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

/s/ John F. North
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State, August 14, 2006.